IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26/10/2004

CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ
AND
THE HONOURABLE MR.JUSTICE T.V.MASILAMANI

Criminal Appeal Nos.78 of 2002
and
Crl.A.1359 of 2002 and 1756 of 2003

Chiristhuva Nathan @
Chirittuvanathan@
Chirithuva Nathan .. Appellant in C.A.78 of 2002

1.Robert
2.Sowridass .. Appellants in C.A.1359 of 2002

Arokiamary @
Anthoniammal .. Appellant in C.A.1756 of 2003

-Vs-

State rep. by
The Inspector of Police,
Kodavasal Police Station,
Nagapattinam.
Cr.No.11/2001 .. Respondent in all the three C.As.

Criminal Appeals against the judgment dated 19.11.2001 rendered in S.C.No. 211 of 2001 on the file of Additional Sessions Judge, Nagapattinam.

!For Appellant
all the C.A.s : Mr.P.Venkatasubramaniam.

^For Respondent
in all the C.As. : Mr.E.Raja,
Addl.P.P.

:Common Judgment

V.KANAGARAJ,J

For the sake of convenience the appellant in C.A.No.78 of 2002 is hereinafter referred to as "appellant/A1"; the appellants in C.A.No.125 9 of

2002 as "appellants/A2 & A3" and the appellant in C.A.No.1756 of 2003 as "appellant/A4" in the above said three appeals.

2. All the above three Criminal Appeals have been preferred against the judgment dated 19.11.2001 rendered in S.C.No. 211 of 2001 by the Court of Additional Sessions Judge, Nagapattinam thereby convicting A1, (appellant in C.A.No.78 of 2002) for the commission of offence punishable under Sections 302 and 201 I.P.C., A2 and A3 (appellants in C.A.No.1359 of 2002) for the commission of offence punishable under Section 302 r/w 34 and Section 201 I.P.C. and A4 (appellant in C. A.No. 1756 of 2003) for the commission of offence punishable under Section 302 r/w 114 and 201 I.P.C. and sentencing them to undergo imprisonment for life and to pay a fine of Rs.1000/- each, in default to undergo rigourous imprisonment for a further period of 2 months for the offence under Section 302 r/w 34 I.P.C. 302 r/w 114 I.P.C. respectively and further each of them to undergo rigourous imprisonment for 3 years and to

pay a fine of Rs.500/- each, in default to undergo R.I for a further period of 2 months for the offence under Section 201 I.P.C. further directing the sentences to run concurrently.

3. The case of the prosecution is that the deceased Paritha Mari and first accused's sister Anitha Mari were friends; that the deceased Paritha Mari used to go to first accused's house frequently to see her friend; that in due course, the first accused and the deceased fell in love with each other; that on compulsion from the Panchayadar, first accused married Paritha Mari on 21.2.1999 in Vadavair Matha koil; that the first accused's parents opposed the marriage; that again on 23.5.1999 the first accused married Paritha Mari in Susaiyappar Alayam in Perumpanniyur; that there was a quarrel in between Paritha Mari and the first accused's parents, hence Paritha Mari went to her parents house and lived with them; that the first accused suspecting Paritha Mari's conduct, wanted to marry another girl; that on 13/14.1 .2001 at 1.15 hours the first accused, his friend A2 and his parents with the common intention to kill Paritha Mari A2 catching hold of her hands, A3 catching hold of her legs, the first accused strangulated her and during the said process, the fourth accused stood as guard outside the door and watched outsiders; that after the death of Paritha Mary, they hanged her body so as to appear a suicide.

4. The Court of Additional Sessions Judge, Nagapattinam has conducted a trial in which the prosecution has brought forth oral and documentary evidence and the material objects. For the oral evidence, 12 witnesses have been examined as P.Ws. 1 to 12 and for documentary evidence 20 documents have been marked as Exs.P.1 to P.20, besides marking 11 Material Objects as M.Os. 1 to 11 in proof of the case by the prosecution to the standards required under law that is proof beyond reasonable doubts and having appreciated these evidence placed on record, the Court of Additional Sessions Judge, Nagapattinam has ultimately arrived at the conclusion holding the first accused (appellant concerned with C.A.78/2002) guilty of the offences under Sections 3 02 and 201 I.P.C., the second and third accused (appellants in C.A.13 59/2002)each guilty of the offence under Section 302 r/w 34 I.P.C and Section 201 I.P.C. and the 4th accused (appellant in C.A.1756/20 03), guilty

of the offence under Section 302 r/w 114 I.P.C. and Section 201 I.P.C. and would impose the punishments as aforementioned.

5. It is only challenging the conviction and sentence as arrived at by the Court of Additional Sessions Judge, Nagapattinam, as per its judgment dated 19.11.2001 all the convicts have come forward to prefer the above Criminal Appeals on grounds brought-forth in the grounds of Appeals such as, that the trial Court ought to have rejected the evidence of P.Ws. 3 and 4, who are stated to be eye-witnesses, because their conduct shows that they did not prevent the accused committing the offence; that they did not raise hue and cry and thereby prevented the commission of the offence, nor did they inform the matter to the police, but went to sleep; that the trial Court ought to have held that the incident was a pure case of suicide, as the body was hanging with the help of sari; that the lower Court ought to have rejected the FIR, since the same reached the Court after a long delay, thereby leading the case to entertain considerable doubts regarding the case of the prosecution; that the lower Court ought to have rejected the arrest and recovery of towel; that the lower Court ought to have seen that the material object is a double edged weapon, which was used both for protection and defence and thus, there is every possibility of impleading the accused; that the lower Court ought to have seen that there is no reason for the other accused to help the first accused; that in any event, the sentence imposed on the appellants is excess. On such grounds, the appellants would ultimately pray to set aside the conviction and sentence arrived at by the trial Court in its judgment and would pray to set them at liberty.

6. Heard the learned counsel appearing on behalf of the appellants and the learned Additional Public Prosecutor appearing on behalf of the respondent.

7. During arguments, the learned counsel appearing on behalf of the appellants would submit that though P.Ws. 3 and 4 were cited as eyewitnesses to the occurrence, they did not come forward to give complaint to the police; that had they really witnessed the occurrence, they would have raised hue and cry to save the life of the deceased, but they gave information to P.W.6 only after 8 hours of the occurrence; that the conduct of P.Ws. 3 and 4 would show that they were not the eye-witnesses to the occurrence; that even though the copy of the complaint was received by the Court at 2.45 p.m. on 14.1.2001, the statement of witnesses along with the statement of eye-witnesses P.Ws.3 , 4 and P.W.6 were received by the Magistrate only on 15.1.2001; that according to P.Ws. 3 and 4 they have seen the occurrence through the roof holes in the light of chimni lamp, but it is not possible to see the entire occurrence through the roof holes in the light of chimni lamp; that according to P.W.1 he came to know about the occurrence through his henchman at 10.00 a.m. on 14.1.2001 and thereafter he came to the scene of occurrence, whereas from the statement of P.W.6 he presumed that the first appellant would have committed murder of his wife and that it is not specifically stated that the first appellant did commit the murder.

8. The learned counsel for the appellants would further submit that

neither in the FIR nor in the inquest report anything brought out to the fact that these four accused have committed the murder as alleged by P.W.4; that according to P.W.6, he came to know about the occurrence only through P.Ws. 3 and 4 at 9.00 a.m. on 14.1.2001, but according to P.W.1 he examined P.W.6 and reduced his statement into writing in Ex.P.1 complaint against the first accused alone and lodged the same at Kudavasal Police Station at 12.00 Noon on 14.1.2001; that the said statement reached the Court at 2.45 p.m. on 14.1.2001; that in the complaint Ex.P1, there is no allegation against the other accused; that in Ex.P.1, P.W.1 says that only on presumption A1 would have committed the offence and he has not mentioned the names of any other person which would only show that it is not a correct version of the prosecution case; that only after coming to know about the cause of death, they have recorded the statements of P.Ws. 3,4 and 6 and sent to the Court only on 15.1.2001 only for the purpose of implicating the accused 2 to 4; that post-mortem was done only on 15.1.2001 after 36 hours which is fatal to the case of the prosecution; that the doctor's evidence does not corroborate with the other evidence; that even in the Inquest Report in columns 9 and 15, there is no mention about the names of P.Ws. 3 and 4; that admittedly, there are 40 houses near the scene of occurrence, but no one was examined; that P.Ws.3 and 4 are not reliable witnesses and they have been examined only for the purpose of implicating the other accused. On such arguments, he would pray for acquittal of the appellants.

9. On the other hand, the learned Additional Public Prosecutor would submit that P.Ws. 3 and 4 are the eye-witnesses to the occurrence; that admittedly P.Ws. 3, 4 and the accused are the natives of one and the same village; that since there is light at the scene of occurrence, they could easily identify the accused even though the occurrence is in the night; that the accused persons should have explained at the time of examination under Section 313 Cr.P.C. about the nonavailability of light. At this juncture, the learned Additional Public Prosecutor would cite a decision of Hon'ble Apex Court reported in 2004 Supreme Court Cases (Cri) 144 (State of U.P. v. Babu and others) wherein it has been held:
"It is to be noted that the identification by torch was clearly indicated. Merely because the location of the gaslight was not mentioned in the sketch, that cannot be a suspicious circumstance since the first information report was lodged without unreasonable delay, as noticed by the trial court. The High Court has also not disturbed the finding in that aspect.
Apart from the mention about the torch-light, one important aspect which cannot be lost sight of and which is of relevance and great significance is that the accused persons are known to the witnesses. When the persons are known, identification is possible from the manner of speech, manner of walking and gesticulating and special features of a person like the physical attributes."

10. The learned Additional Public Prosecutor would further submit that the evidence of P.Ws. 3 and 4 are admissible under Section 6 of the Evidence Act which deals with 'Relevancy of facts forming part of same transaction' to the effect that 'facts, which, though not in issue, are so connected with a fact in issue as to form part of the same transaction are

relevant whether they occur at the same time and place or at different times and places; that all the accused committed murder of Parithamari; that the facts which are exclusively within the knowledge of the accused persons, but they have not explained anything at the time of examination under Section 313 Cr.P.C. At this juncture, the learned Additional Public Prosecutor would cite a decision of the Hon'ble Apex Court reported in 1996 (4) Crimes 282 (Rattan Singh v. State of Himachal Pradesh) wherein it has been held:

" Even apart from section 32(1) of the Evidence Act, the aforesaid statement of Kanta Devi can be admitted under section 6 of the Evidence Act on account of its proximity of time to the act, of murder. Illustration 'A' to section 6 makes it clear. It reads thus:

"A is accused of the murder of B by beating him. Whatever was said or done by A or B or the by-standers at the beating or so shortly before or after it as to form part of the transaction is a relevant fact."
"Here the act of the assailant intruding into the courtyard during dead of the night, victim's identification of the assailant, her pronouncement that appellant was standing with a gun and his firing the gun at her, are all circumstances so intertwined with each other by proximity of time and space that the statement of the deceased became part of the same transaction. Hence it is admissible under Section 6 of the Evidence Act.
In either case, whether it is admissible under Section 32(1) or under Section 6 of the Evidence Act, it is substantive evidence which can be acted upon with or without corroboration in finding guilt of the accused.
But then the court must be assured of the remaining two aspects i.e. reliability of the evidence and accuracy of the contents of the pronouncement. We have no difficulty in believing that Kanta Devi would have said so. Both PW3 and PW10 have spoken about this in their evidence. Further PW3 has mentioned about it even at the earliest opportunity when he gave First Information Statement. As to the question whether Kanta Devi would have correctly identified appellant, it was contended that it was then dark and there was shadow of a mango tree and hence she could not have identified him correctly. The evidence shows that it was a moonlit night and it happened on the open courtyard. The gunning down was followed by about between the assailant on the one side and PW3 and PW10 on the other during which these witnesses also had occasion to identify the assailant at very close range. Further again Ex.P1 gun which PW10 Sheela Devi succeeded in wresting from the appellant is admittedly the gun of the appellant."

11. The learned Additional Public Prosecutor would further submit that the evidence established by the prosecution is that all the accused were present at the scene of occurrence; that five persons came together armed with weapons and three took away the deceased while two prevented others from intervening and even if those who took away only committed the murder, the remaining two would also be liable with the help of Section 34 IPC. At this juncture, the learned Additional Public Prosecutor would cite a decision of the Hon'ble Apex Court reported in 2002(7) Supreme 73 (Nandu Rastogi @ Nandji Rastogi and another v. State of Bihar) wherein it has been held:

"To attract Section 34 IPC it is not necessary that each one of the accused

must assault the deceased. It is enough if it is shown that they shared a common intention to commit the offence and in furtherance thereof each one played his assigned role by doing separate acts, similar or diverse."

On such arguments, the learned Additional Public Prosecutor would pray for dismissal of the above appeals.

12. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the arguments of the learned counsel for the appellants and the learned Additional Public Prosecutor contra on facts pertaining to the charge, what comes to be known is that the deceased was the wife of appellant/A-1(in the first appeal) and the marriage in between them was solemnised in a Church on 21 .2.1999 and since the parents of A.1 opposed the marriage, they again arranged for the marriage of A.1 with the deceased a second time following all the procedural paraphernalia in accordance with the rites of their religion on 23.5.1999 at Susaiyappar Alayam in Perumpannaiyur; that since the parents of the appellant/A1 i.e. A.3 and A.4 have started objecting to and quarrelling with the deceased Parithamari, she had to leave the matrimonial home and seek asylum with her parents.

13. The prosecution case is that while the appellant/A1 in the first appeal suspecting the character of the deceased, agreed for a second marriage with another girl and further all the appellants joining hands with each other who are respectively the friend and parents of appellant/A1 with intent to cause the death of the said Pariths Mari, on 13/14.1.2001 at about 1.15 a.m. with a common intention of committing the murder of the said Paritha Mari, A2 caught hold of her hands, A-3 caught hold of her legs and A.1 strangulated her, when A.4 is alleged to have stood guard outside the door watching outsiders and after causing the death of the deceased, in the manner above mentioned, all the appellants hanged her body so as to appear as suicide and hence all the appellants were charged in the manner above extracted.

14. The court of Additional Sessions Judge, Nagapattinam having conducted the trial wherein on the part of the prosecution whose duty it is to prove their case beyond all reasonable doubts have examined 12 witnesses; marked 20 documents besides marking 11 material objects and on the part of the defence the evidence adduced in all respects being nil, the trial court having appreciated the said evidence placed on the part of the prosecution has ultimately arrived at the conclusion that the charge against all the accused therein came to be proved in evidence and has convicted and sentenced each of them in the manner afore extracted, testifying the validity of which the convicts have come forward to prefer all the above three appeals on such grounds as brought forth in paragraph 4 supra.

15. Certain admitted facts in the above appeals could be seen from the evidence to the effect that the first accused and the deceased were husband and wife, their marriage having been solemnised in St. Joseph Church on 23.5.1999 as it is established under Ex.P-7 marriage extract from the Registrar of Marriages. From the evidence of Prosecution witnesses it also comes to be established that they were living together at the residence of the A1 with his parents A.3 and A.4 as joint family and a little later since A1

had to leave home on his job for a month, he had left the deceased at her parental abode and after coming back to his residence, it further comes to be seen from the evidence, that the deceased was not getting well with her husband and parents-in-law since they were always quarrelling with her and illtreating her, ultimately the appellant/A1 suspecting the chastity of the deceased, he had even gone upto the extent of getting married a second time with another girl as against the will of the deceased.

16. The prosecution case is that in the said process, since the deceased was a hindrance to A1 and A.3 and A.4 they wanted to eliminate the deceased with the assistance of A1's friend, A2 and all joining hands with each other on the date of occurrence on 13/14.1.2001 at about 1.15 a.m. A2 caught hold of the hands of the deceased, who was lying at the residence of A1, her face looking upwards, A3 caught hold of her legs and A1 strangulated her with his hands further twisting a piece of sari and squeezing her neck, thus ultimately causing the death of the deceased. It is the further case of the prosecution that in the said process, A4 stood guard outside the place of occurrence being the consenting party to the felon.

17. The further case of the prosecution as projected through the witnesses, particularly through P.Ws.3 and 4 who have been examined as eye witnesses, is that after the commission of the murder of the deceased, in order to make it appear as one of suicide, A1 is alleged to have twisted with

a piece of sari around her neck and tying the same lifted the body and tied it to the beam of the house and therefore all the accused have also been charged under Section 201 I.P.C.

18. P.Ws. 3 and 4 have been examined by the prosecution as eyewitnesses. They both would come forward to adduce evidence to the effect that during the intercepting night of 13/14.1.2001, they were witnessing a movie in Television and at 1.05 hours, they both went to pass urine at the residence of the accused, when hearing the hiccough noise of the deceased, they looked through a gap in the hut and they saw the entire occurrence not only the accused causing the death of the deceased but also hanging the body of the deceased in the beam of the house in their attempt to cause disappearance of evidence. However, there is no denying of the fact that neither of these witnesses have either attempted to prevent the occurrence or to report the same to anyone much less to the Police authorities concerned. These witnesses did not even have the courtesy to report what they have seen to the local headman P.W.6 nor even to the local Village Administrative Officer nor even to any of the general public.

19. From the evidence of P.W.6, it comes to be seen that A1 had intimated at 7.00 a.m. on 14.1.2001 to the effect that the deceased had committed suicide by hanging and after that at about 9.00 a.m., these two eye witnesses P.Ws.3 and 4 have reported to P.W.6 that all the four accused have beaten the deceased to death. P.W.6 on his part, would admit that he was inimically disposed of towards the first accused and his family. Moreover, it is the case of the prosecution that A4 was standing outside the place of

occurrence and while so it is quite unbelievable that P.Ws.3 and 4 witnessing the whole occurrence from the beginning till the end and if the version of P.Ws 3 and 4 has to be believed, the version of the prosecution that A4 was standing guard outside the house, inside which the occurrence took place, should be false. No particulars have been placed by P.Ws.3 and 4 to have witnessed the occurrence particularly in the manner from a hole that was made in the thatched roofing which was eaten away by white ants in spite of A4 standing guard to prevent any interference into the whole operation by outsiders. Therefore, this court is of the strong view that the evidence of P.Ws.3 and 4 has to be rejected as false, they being planted witnesses for the purpose of creating eye witnesses for the occurrence and therefore the case of the prosecution does not at all depend on the evidence of P.Ws 3 and 4 who have been depicted as eye-witnesses as though they have witnessed th e occurrence in the dead of night without any feasibility to believe that they might have witnessed the occurrence.

20. It could be seen that since no information from anyone from the village reached to the authorities, ultimately on information passed on by the village menial, P.W.1 Village Administrative Officer, has gone to the spot at 10.00 a.m and thereafte specting the scene of occurrence, P.W.1 would see the door of the house, in which the occurrence had taken place, was open and the legs of the deceased were touching the floor and therefore on examination of P.W.6 at 12.00 noon, he lodged Ex.P-1 complaint. This witness would further depose to the effect that at the time of his visit, neither A2 nor A4 were present and the piece of sari through which the body was hanged would be marked as M.O.1. The sari which was worn by the deceased at the time of occurrence would be marked as M.O.2 through this witness. Thus the law was set on motion.

21. It was P.W.12 the Inspector of Police and Investigating Officer, who was present at the time of lodging Ex.P-1 complaint by P.W.1, Village Administrative Officer and he himself registered a case in Kudavasal Police Station Crime No.11 of 2001 for the offence under Section 302 Indian Penal Code and would prepare Exhibit P-17 printed F.I.R. and would send the Express F.I.R. to the Court and the copies of the same to the higher officials through P.W.10 Head Constable and taking up the investigation, he himself would proceed to the spot and in the presence of P.W.7 and one Karunakaran, he would prepare Ex.P-18 observation Mahazar and rough sketch and would conduct the inquest on the body of the deceased in between 1.15 p.m. and 3.45 p.m. in the presence of the witnesses and would send the body to the Government Hospital, Kudavasal through P.W.9 Head Constable for postmortem examination of the same and would examine the other witnesses including the medical witnesses and would arrange for photographs to be taken on the body of the deceased, would effect the seizure of the M.Os collected and collect the medical report and arrested A1 and A2 and consequent to their confession statement, the admissible portion of which are marked as Exhibits P-10 and P-11, M.O.4 Kasicloth,(fhrpJz;L) which was used for strangulating the deceased and the full sleeves shirt M.O.5 belonging to A2 were seized. Thereafter, he left the scene of occurrence and these vital material objects which are very essential for deciding the case of the prosecution have been recovered by this witness, the Investigating Officer. These M.Os.4 and 5 would be recovered under the

cover of Exhibits P-12 and P-13 mahazars. This witness after performing all his duties and responsibilities in the investigation of the case. would ultimately lay charge sheet against all the accused A-1 to A-4 for the commission of the offences under Sections 302 and 201 I.P.C. against the first accused, 302 r/w.34 and 201 I. P.C. against the second and third accused and Section 302 r/w. 114 against the 4th accused.

22. As we have already seen, this court is not inclined to believe the version of P.Ws. 3 and 4 who were examined as eye-witnesses for the reasons assigned supra. However, the defence version is that it was a suicide by hanging and not murder. In order to decide whether the case was one of suicide or murder, the medical evidence has to be examined such as the evidence of P.W.2, the postmortem doctor, who performed autopsy on the body of the deceased and would issue Ex.P-6 post mortem certificate. According to the evidence of P.W.2 and Ex.P-6, post mortem certificate, on examination of the body of the deceased on 15.1.2001 at 11.30 a.m. he found the following external injuries:

"Rigor mortis present in all 4 limbs and body. A well defined C.M.S., a slightly depressed mark below the thyroid cartilage and encircling the neck horizontally not covered 2 c.m. on the left side of the neck. Two deep nail marks on the right side of the neck below the ligature mark. A deep nail mark about 1.5 c.m. below the ligature mark on left side. Nose frothy bloodstained fluid present. Mouth opened. Tongue protruded and beaten up between Jaws-teeth completed. Jaws clenched."

23. This witness would opine that the deceased would appear to have died 32-36 hours prior to autopsy due to asphyxia. During the examination of P.W.2 doctor as a witness he would offer his opinion that the Hyoid bone was intact and that the death should have occurred only due to Asphyxia; that the first injury noted above could have been caused on account of strangulating the neck of the deceased by cloth and the nail marks could have been caused at the time of strangulating the neck by hand.

24. On a careful study held into the medical evidence, extracted supra, two aspects are glaring i.e., hyoid bone of the deceased was intact. It is the settled law that normally in case of hanging Hyoid bone would be cut, but in this case, it is intact. Further the nail marks found around the neck of the deceased, no doubt, would lead to the only conclusion that she had been strangulated by hand so as to occur such deep nail marks on her neck. Therefore based on such strong medical evidence easy conclusions could be arrived at that it is a case of homicide and not suicide.

25. Further in consideration of the other facts and circumstances of the case, from the evidence of P.W.1 the Village Administrative Officer that at the time that he visited the spot on information, it is seen that the door of the house within which the occurrence had taken place was open and that the legs of the deceased were touching the floor, the only conclusion that could be arrived at is that it is a case of murder and not a suicide by hanging. With the evidence of P. W.6, it could be assessed that a strained relationship existed in between the first accused and the deceased and that arrangements were being made for A.1 to get married with another girl and that the first appellant, suspecting the fidelity of the deceased, was in the habit of quarrelling with her often and again and even on the previous night to the

date of occurrence, there was a quarrel in between them and therefore, all these circumstances would lead to pointing out one's finger towards A1 and the case of the prosecution is that the A1 with the help of other appellants/A2 to A-4, with a common intention to commit murder of the deceased and joining hands with each other, have perpetrated the offence in the manner already extracted in the foregoing paragraphs and it has become the duty of this court to find out, with the available evidences, as to who were the real culprits who caused the murder of the deceased.

26. Since this court has disbelieved the evidence of P.Ws.3 and 4 regarding their witnessing the occurrence at the place, time and in the manner that both come forward to depose this court does not want to pay any credence to their evidence since they do not suggest credibility and because of the artificiality and grudges entertained against the accused since they have been ill-disposed of with them and therefore only through other available sources of evidence, the case of the prosecution has to be decided.

27. It is glaringly seen from the very projection of the case, that most probably, placing reliance on the statements of P.Ws.3 and 4, the Investigating Officer would have arrived at the conclusion and laid the charge sheet against all the appellants/accused. But, the evidence of P.Ws.3 and 4 have been eschewed by this Court for unreliability and artificiality without any genuine circumstances brought forth for these witnesses P.Ws 3 and 4 to have been present at the spot in the dead of night so as to witness the entire occurrence which was happening inside the house so minutely, particularly when A.4 was said to be watching the same outside as guard. Therefore, this Court has every reason to eschew the entire evidence of P.Ws.3 and 4, from the purview of consideration and minus the evidence of P.Ws.3 and 4, the case has to be decided. Regarding the motive part of the prosecution case, the enmity attributed was only to the appellant/A1 and no instance of any ill-feeling or enmity in between the deceased and the appellants/A3 & A4 has been brought forth nor is there any material evidence other than that of P.Ws 3 and 4 made available to pin the responsibility, particularly in the manner alleged on the part of the prosecution to the appellants/A3 & A4 and in fact minus the evidence of P.Ws 3 and 4 against the appellants/A3 and A4, the prosecution case is a case of no evidence and therefore these appellants/accused A.3 and A.4 cannot at all be punished for anything connecting the whole frame of the case of the prosecution. The trial court since it has believed the version of P.Ws. 3 and 4 has arrived at a wrong conclusion that the appellant/A3 was holding the legs of the deceased at the time of occurrence and also was helping the appellant/A1 to lift the body so as to be tied by neck on the beam and the theory of the appellant/A4 standing as guard would go out of scene w ith no other piece of evidence made available against her and therefore they should have been held not guilty of the offence since the case of the prosecution was not at all proved against them much less beyond reasonable doubts.

28. So far as the other main accused who are appellants/A1 and A2 are concerned, very strong evidence is available from the recoveries of M.Os.4 and 5 i.e., 'Kasi thundu', M.O.4 a piece of cloth which was made use of for strangulating the deceased at the time of occurrence and M.O.5 full sleeves shirt belonging to the appellant/A2 which has been recovered under the cover

of mahazars Exhibits P-12 and P-13, pursuant to the arrest and the admissible portion of the confessioned statements of both these appellants/A-1 and A-2 which have been marked as Exhibits P-10 and P-11. Therefore, these circumstantial evidence unerringly go to prove that the entire operation of the commission of the murder of the deceased Paritha Mari had been planned and executed by appellants/A-1 and A-2 alone at the time and place and the in manner alleged and hence it should be held that the lower court, so far as the case of the prosecution as against appellants/A-1 and A-2, is concerned, has arrived at the right conclusion to convict and sentence them in the manner aforementioned.

29. For all the above discussions held, and conclusions arrived at, this court is of the view to modify the conclusion to hold that the commission of the offence of murder of deceased Paritha Mary has been perpetrated by the appellants/A1 & A2 alone and therefore, it is only just and proper to confirm the conviction and sentence passed by the trial court against them. So far as the appellants/A3 and a4 are concerned, since no reliable evidence has been placed on record for these two appellants/A-3 and A-4 to have participated in the occurrence of the murder of Paritha Mery, it is held that the prosecution has failed to prove the case against them to the requirements of law beyond reasonable doubts and hence the conviction and sentence passed against the appellants/A3 and A4 by the trial court has to be set aside and the same is decided accordingly.
In result,
(i) from among the three Criminal Appeals, the first C.A.No.78 of 200 2 does not merit acceptance and stands dismissed as such.
(ii) C.A.No.1359 of 2002 insofar as it is concerned with the first appellant/A2, since the case of the prosecution against him is held proved beyond all reasonable doubts,the appeal is dismissed and in so for as it is concerned with the second appellant/A3 (Sowridass) in this criminal appeal, the prosecution has failed to prove the case against him and hence the conviction and sentence passed by the lower court against him is set aside and he is ordered to be set at liberty forthwith unless he is required in any other case.
(iii) So far as the third Criminal appeal in C.A.No.1756 of 2003 is concerned, since the prosecution has failed to prove its case against this appellant/A4 beyond all reasonable doubts, the above appeal stands allowed, setting aside the conviction and sentence passed by the trial court against her and the appeal is allowed and the appellant/A4 is ordered to be set at liberty forthwith unless she is required in any other case.
(iv) The fine amounts, if any paid by the appellants/Accused 3 and 4 , shall be refunded to them.

Index:Yes

Internet: Yes

gr/ks

Copy to:-

1. The Addl. Sessions Judge,
Nagapattinam

2. -do- through The Prl. Sessions Judge,
Nagapattinam.

3. The District collector,
Nagapattinam.

4. The Director General of Police,
Chennai-4.

5. The Public Prosecutor, High Court,
Madras.

6. The Judicial Magistrate,
Thiruvarur.

7. -Do- Thro' The Chief Judicial Magistrate,
Nagapattinum.

8. The Inspector of Police,
Kudavasal Police Station,
Nagapattinam District.

9. The Superintendent,
Central Prison, Cuddalore.

10.The Superintendent,
Special Prison for Women,
Trichy.

Advance order

In result, from among the three criminal appeals, the first C.A.No.7 8 of 2002 does not merit acceptance and stands dismissed as such. C.A.No.1359 of 2002 in so far as it is concerned with the first appellant/A2, since the case of the prosecution against him is held proved beyond all reasonable doubts,the appeal is dismissed and in so for as it is concerned against second appellant/A3 (Sowridass) in this criminal appeal, the prosecution has failed to prove the case against him, the above appeal so far as it is concerned against the 2nd appellant/A3, the conviction and sentence passed by the lower court against him are set aside and he is ordered to be set at liberty forthwith. So far as the third Criminal appeal in C.A.No.1756 of 2003 is concerned, since the prosecution has failed to prove its case against this appellant/A4 beyond all reasonable doubts, the above appeal stands allowed, setting aside the conviction and sentence passed by the trial court against her and the appeal is allowed and the appellant/A4 is set at liberty

forthwith. The fine amount if any paid by the appellants/Accused 3 and 4 shall be refunded.